APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13597

ALABAMA MILLS, INC., *et al.*, APPELLANTS

v.

JAMES P. MITCHELL, Secretary of Labor, *et al.*,
APPELLEES

Appeal from the United States District Court
for the District of Columbia

Decided April 26, 1957

Before EDGERTON, *Chief Judge*, and WASHINGTON and DANAHER, *Circuit Judges*.

PER CURIAM: The judgment is affirmed, Judge Washington dissenting. Each member of the court adheres to the views he expressed in *Mitchell* v. *Covington Mills, Inc.*, 97 U.S. App. D.C. 165, 229 F. 2d 506.

Affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 259-53

COVINGTON MILLS, ET AL., *Plaintiffs*

vs.

JAMES P. MITCHELL SECRETARY OF LABOR, *Defendant*

Civil Action No. 614-53

ALABAMA MILLS, ET AL., *Plaintiffs*

vs.

JAMES P. MITCHELL SECRETARY OF LABOR, *Defendant*

Upon Motions For Preliminary Injunction

SCHWEINHAUT, District Judge.

Gentlemen, I am persuaded that I must stay the effective date of this order. Having read this file completely—perhaps not as studiously as more time would permit, but certainly completely yesterday and last night—and having heard very able arguments and very helpful arguments today, there is very grave doubt in my mind about whether or not the Secretary arrived at his order pursuant to law.

It is my impression, shall I put it, at this time, that he did not; because it seems to me "locality" clearly does not mean the United States of America. The efforts to come up with something that would be workable and meaningful all were directed in the Congress to something less than the entire United States. Therefore, as I say, I have very grave doubts and lean to the opinion that it was not legally ar-

rived at, in the sense that it was not arrived at agreeably to the requirement of the statute.

Then we must ask whether or not, that being so, these plaintiffs have any right to complain about it. I think they clearly do; and I think they do for two reasons: One is, I think they are aggrieved; at least, can be. They have a right, since they are in this industry to seek, even if they had not done so before, Government contracts; and it seems to me they have a right to seek them on the basis of regulations legally arrived at, and not to have the burden put upon them of contriving and fashioning a bid onerous to them, as they think, which they believe is based upon a concept that is illegal in its nature.

Also, I think that if they are right about it, and that this should turn out to be held by the Court to have been illegally arrived at, then they can indeed suffer irreparable injury, for what I think are the rather obvious reasons expressed here today.

Moreover, I think they have a standing to sue for the simple reason that the statute said they may have it. There never was a statute more clearly designed to overturn a decision of a court than this one. I speak, of course, of the Fulbright Amendment. There is no doubt about it, that the Lukens case, in 310 U. S., would have kept these plaintiffs out of court. There is equally no doubt in my mind, in this preliminary stage of this case, that Senator Fulbright and the Congress, which went along with him, intended to cure that and to open the door to plaintiffs such as these to the courts to obtain the very kind of review they are seeking here.

Now, I do not pass upon the merits, and the opinions I express in that regard, insofar as they may concern the merits, are very definitely curbstone. This case will not come before me, since I am in the Motions Court, and I do now advance the case for final hearing; since it is a matter that should not be left hanging in a state of hiatus.

I believe my duty at this point is absolutely clear: and that is to stay the effective date of this order.

Upon Motions for Summary Judgment

HOLTZOFF, District Judge.

This case comes before the Court on cross motions for summary judgment. The action is brought for a declaratory judgment to adjudicate an order by the Secretary of Labor to be invalid as in contravention of the statute pursuant to which it was promulgated.

The order in question fixed a minimum wage for persons employed in certain branches of the textile industry in connection with Government contracts. This was done pursuant to the Walsh-Healey Public Contracts Act. The prevailing wage as determined by the order in question promulgated on December 5, 1952, was to be the same throughout the United States.

The Walsh-Healey Act, pursuant to which this order was promulgated, 41 U.S.C.A. § 35 et seq. relates to Government contracts for the manufacture or furnishing of materials, supplies, articles and equipment in any amount exceeding $10,000. One of the provisions of the Act is that there shall be included in each contract a representation and stipulation that all persons employed by the contractor in its performance will be paid not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract.

It is contended by the Plaintiffs that under this provision the Secretary of Labor is without power to fix a single prevailing minimum wage for a particular industry on a nation-

wide basis. To determine whether this objection is sound it is necessary to analyze the pertinent phraseology of the Act. The Secretary of Labor is directed to determine the prevailing minimum wages for persons employed on similar work, or persons employed in the particular or similar industries, or persons employed in groups of industries. In other words, he may act under any one of these three provisions. These provisions are followed by the clause, "currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract."

It is contended by the defendants that the words "currently operating in the locality" are limited only to the last of the three alternatives, namely, persons employed in similar groups of industries. On the other hand, the plaintiffs claim, contrary to the contention of the Secretary, that those words relate back to all of the three clauses. There is some ambiguity in the statute. It is difficult to construe it according to strict grammatical requirements. The words "currently operating" seem inapplicable to the noun "work" or to the noun "industries." It is, perhaps, an unfortunate choice of words, but it seems to the Court that the phrase "currently operating" may not be construed as being limited solely to the last of the alternatives but relates back to each of them, namely, persons employed on similar work currently operating in the locality, or, persons employed in the particular or similar industries currently operating in the locality, or persons employed in similar groups of industries operating in the locality. This is the interpretation, in the opinion of this Court, which should be accorded to those words.

In this connection, the Court wishes to call attention to the fact that when the construction of this provision was first raised in litigation in Lukens Steel Co. v. Perkins, 70 App. D.C. 354, 107 F. 2d 627, 630, the point now made by counsel for the Secretary of Labor was not advanced, but

it seemed to be assumed that the words "'currently operating in the locality'" were applicable to and limited each of the three alternatives. Apparently the present construction sought to be applied by counsel for the Secretary of Labor is more or less of an afterthought.

Since the phrase "currently operating in the locality" applies to each of the three alternatives, the next question to be determined is whether the entire United States of America can be considered as a single locality in the discretion of the Secretary. To be sure, the word, "locality" is an indefinite term. It may mean a single community. It may mean a county. It may mean a region. A considerable degree of discretion is vested in the Secretary to determine what shall constitute a "locality" for any particular purpose. So long as the construction placed by the Secretary is reasonable, the Court may not set it aside. May it be said, within reason, that the entire United States of America may be regarded as a single "locality"? It seems to the Court that to attach this interpretation to this term would be to place a tortured interpretation and attach a distorted meaning to a simple English word.

Such a type of interpretation and construction of words was satirized by a great English satirist in the well-known book "Through the Looking Glass." This book records a dialogue between Alice and Humpty Dumpty and says:

> "'When I use a word', Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean—neither more or less'.
>
> "'The question is', said Alice, 'whether you can make words mean so many different things.'
>
> "'The question is', said Humpty Dumpty, 'which is to be master—that's all'".

The Court is not going to place its seal of approval upon that type of construction of plain English words. The

Court is of the opinion that under no circumstances is it reasonable to construe the word "locality" as applicable to the entire United States of America and calling the entire country a single "locality".

The Court is especially impelled to this conclusion by the opinion of the Court of Appeals for the District of Columbia Circuit in Lukens Steel Co. v. Perkins, 70 App. D. C. 354, 107 F. 2d 627. That case involved the validity of an order under this statute, which fixed wages in the steel industry at a single figure for an area of about fourteen states and the District of Columbia and referred to them as a "locality". In an opinion written by Mr. Justice Justin Miller, in which Mr. Justice Vinson, then a member of that court, concurred, it was very cogently and persuasively held that the word "locality" may not be used to describe a broad area consisting of fourteen states and the District of Columbia. On this point the court made the following observations, 107 F. 2d at pages 630, 631:

> "It is true that the word *locality* is one of somewhat indefinite meaning. Still, its indefiniteness has certain well recognized limits in common meaning and usage, which exclude and forbid the interpretation placed upon the word by the appellees in their determination".

And again the court stated:

> "In ordinary and common usage *locality* is synonymous in meaning with such words as *place, vicinity, neighborhood and community.* These words, also, are too indefinite to be used for purposes of exact measurement in terms of acres or square miles. But neither they nor *locality* itself, in any case, connote large geographical areas, with widely diverse interests, such as the fourteen states and the District of Columbia, grouped in the protested determination". (Emphasis original).

A fortiori, if fourteen states is too large an area to be deemed a single locality, it necessarily follows that the

United States of America is much too large an area to be so considered.

In that case Mr. Justice Edgerton dissented. He did not disagree with the interpretation by the majority of the word "locality", but reached the conclusion that the plaintiffs had no standing to sue and for that reason and that reason alone felt that the bill of complaint should be dismissed. The Supreme Court reversed the determination of the Court of Appeals, 310 U. S. 113, 60 S. Ct. 869, 84 L. Ed. 1108. The Supreme Court, however, did not discuss the views of the majority of the Court of Appeals as to what is meant by "locality", but merely held that the complaint should be dismissed on the ground that the plaintiffs had no standing to sue. This procedural obstacle was later overcome by the so-called "Fulbright Amendment", which permits judicial review of the determinations of the Secretary of Labor under the Walsh-Healey Act pursuant to the provisions of the Administrative Procedure Act, 5 U. S. C. A. § 1001 et seq.[1]

The Court is impressed with arguments made by counsel as to the administrative difficulty that would be created if the Secretary of Labor were not to be permitted to make nation wide determinations under the Walsh-Healey Act. The Court is further impressed with the argument that it is desirable, from a social and economic standpoint in some instances to fix the rate of prevailing wages on a nation wide basis. The Court expresses no opinion on these points because they are not for the judiciary to determine. These arguments should be addressed to the Congress, because they relate to policy and expediency and not to the interpretation and the meaning of what the Congress has already enacted.

Accordingly, the Court will hold that for the reasons stated the order of the Secretary of Labor here involved is invalid as in contravention of the statute, and will deny defendants' motion for summary judgment and grant the plaintiffs' cross motion for the same relief.

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[1] 41 U. S. C. A. § 43a, added June 30, 1952, 66 Stat. 308.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12650

JAMES P. MITCHELL, Secretary of Labor, APPELLANT

v.

COVINGTON MILLS, INC., *et al.*, APPELLEES

No. 12651

JAMES P. MITCHELL, Secretary of Labor, APPELLANT

v.

ALABAMA MILLS, INC., *et al.*, APPELLEES

No. 12652

NATIONAL ASSOCIATION OF COTTON MANUFACTURERS, *et al.*, APPELLANTS

v.

COVINGTON MILLS, INC., *et al.*, APPELLEES

No. 12653

NATIONAL ASSOCIATION OF COTTON MANUFACTURERS, *et al.*, APPELLANTS

v.

ALABAMA MILLS, INC., *et al.*, APPELLEES

No. 12654

TEXTILE WORKERS UNION OF AMERICA, CIO,
APPELLANT

v.

COVINGTON MILLS, INC., *et al.*, APPELLEES

No. 12655

TEXTILE WORKERS UNION OF AMERICA, CIO,
APPELLANT

v.

ALABAMA MILLS, INC., *et al.*, APPELLEES

Appeals from the United States District Court
for the District of Columbia

Decided Dec. 1, 1955

Before EDGERTON, Chief Judge, and WASHINGTON and DANAHER, Circuit Judges.

EDGERTON, *Chief Judge:* The Walsh-Healey Public Contracts Act of 1936 provides that any government contract for more than $10,000 shall include a stipulation that all persons employed in manufacturing or furnishing goods under the contract will be paid "not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract; . . ." 41 U.S.C. § 35, 49 STAT. 2036, § 1.

The Secretary of Labor determined in January 1953, after extensive hearings, that the prevailing minimum wage in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry was $1.00 per hour.

Two separate groups of textile manufacturers brought separate suits against the Secretary, under § 10(b) of the Act, 41 U.S.C., § 43a(b), to set aside and enjoin his determination as illegal.[1] By permission of the District Court the Textile Workers Union of America, CIO, The National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company and Hathaway Manufacturing Company intervened as defendants in support of the determination. The cases were consolidated for hearing in the District Court. The court awarded summary judgment to all the plaintiffs and permanently enjoined the Secretary from putting the determination into effect as to any of them, on the ground that the Secretary's authority under the Walsh-Healey Act is limited by the word "locality" and that, therefore, he may not determine a minimum wage on an industry-wide basis. The Secretary and the intervenors appeal.

The policy and purpose of the Act are plain. By statute and regulation, government contracts must go to the lowest responsible bidder. Until the Walsh-Healey Act was passed, it followed that the government, though it urged industry to maintain adequate wage standards, was often compelled to undermine them by contracting with low wage concerns. The Walsh-Healey Act sought to support standards by withholding contracts from such concerns. "This Act's purpose was to impose obligations

[1] Before its effective date, the determination was stayed as to the plaintiffs and the Secretary was temporary enjoined from putting it into effect as to them. While that order was in force, any plaintiff who entered into a contract otherwise subject to the determination was required to post a bond to pay the prescribed wage if the determination were upheld. We entered a somewhat similar order, requiring a bond of $2,000, pending the present appeal.

upon those favored with Government business and to obviate the possibility that any part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment. As stated in the Report of the House Committee on the Judiciary . . . , 'The object of the bill is to require persons having contracts with the Government to conform to certain labor conditions in the performance of the contracts and thus to eliminate the practice under which the Government is compelled to deal with sweat shops.'" *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 128. The Act's "purpose is to use the leverage of the Government's immense purchasing power to raise labor standards." *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507.

The Secretary's findings of fact make it clear that in the textile industry, unlike some industries, only an industry-wide minimum will serve this purpose, because the competition is industry-wide. The District Court's construction of the Act would make it necessary for the Secretary to fix separate minima according to the wages that prevail in each separate textile community. This would freeze the competitive advantage of concerns that operate in low-wage communities and would in effect offer a reward for moving into such communities. Obviously this would defeat the purpose of the Act. It would also make the Act nearly meaningless as applied to a large part of the textile industry; since there is frequently only one textile concern in one neighborhood and it necessarily pays the wages that prevail in its plant.

Because the Walsh-Healey Act uses the word "locality," the appellees say that the plain meaning of the Act forbids the Secretary to fix an industry-wide minimum. As to the "plain meaning" of an Act of Congress the Supreme Court has said: "When that meaning has led to absurd or futile results . . . this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely

an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words.'" *United States* v. *American Trucking Ass'ns, Inc.*, 310 U.S. 534, 543.

Moreover, it is not true that the plain meaning of the Walsh-Healey Act forbids the Secretary to fix an industry-wide minimum in this case. It is not plain that every minimum wage determination under the Act must be limited to a "locality." It is not even plain that a large group of States can never be a locality."[2] The word occurs only in the phrase "currently operating in the locality."[3] The phrase is not plainly intended to qualify any other term than "groups of industries." It may or may not be intended to qualify "the particular or similar industries." It can hardly be intended to qualify "similar work" for "work . . . currently operating in the locality" would be a strange expression. The Secretary found that a dollar an hour is the prevailing minimum on "similar work." He also found that it is the prevailing minimum in the particular industry. In our opinion these findings were fully warranted.

The Secretary's interpretation of the Act as permitting industry-wide determinations of minimum wages is not new. In this industry and many others, during many years, the Secretary has made many such determinations. See, *e.g.*, 41 C.F.R. Parts 202 *et seq.* His practice in this respect has repeatedly been called to the attention of committees of

[2] In *Lukens Steel Co.* v. *Perkins*, 70 App. D. C. 354, 107 F. 2d 627, this court expressed a different view. But the Supreme Court reversed the judgment of this court, and affirmed the judgment of the District Court dismissing the complaint, on the ground that the plaintiffs had no standing to sue. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113. This of course left the opinion, as well as the judgment, of this court without value as a precedent.

[3] It has been suggested that the words "in the locality" are not necessarily tied to the words "currently operating", and that "similar work . . . in the locality" is a possible reading. But since it is by no means the only possible reading it is not the "plain meaning" of the Act.

Congress. Attempts have been made to write his interpretation expressly into the Act. Attempts have also been made to write it expressly out of the Act. Both have failed. Congress has chosen to leave the interpretation of the Act to the Secretary and the courts. As the Supreme Court said in regard to a different but somewhat related statute, the Fair Labor Standards Act, "We decline to repudiate an administrative interpretation of the Act which Congress refused to repudiate after being repeatedly urged to do so." *Alstate Construction Co.* v. *Durkin*, 345 U.S. 13, 17.

Appellees point out that "purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market" are exempt from the statutory requirement of a stipulation that employees will be paid not less than the prevailing minimum determined by the Secretary. 41 U.S.C. § 43; 49 Stat. 2039, § 9. But this exemption has nothing to do with the only matter here in issue, which is the validity of the Secretary's determination. The Secretary determined nothing with regard to the exemption. He determined that "The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis." He did not undertake to decide to what contracts the Walsh-Healey Act, and therefore the minimum wage determination, are applicable. The complaints in these suits do not ask the court to decide that question.[4]

[4] It is therefore immaterial that the Fulbright Amendment to the Walsh-Healey Act provides that review of the "applicability" of a minimum wage determination may be had by any "person adversely affected or aggrieved". 66 Stat. 308, 41 U.S.C. § 43a(b). The Fulbright Amendment also provides that "Notwithstanding the inclusion of any stipulations required by any provision of sections 35-45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the

In our opinion the plaintiffs' other objections to the Secretary's determination are likewise invalid.

The District Court thought it need not rule on a motion of the Secretary to dismiss the complaints, on jurisdictional grounds, as to 144 of the 158 plaintiffs. But the fact that some of the plaintiffs clearly have standing, under the Fulbright Amendment, to seek review of the Secretary's determination, confers no standing on others. We think the District Court should decide, in the first instance, which plaintiffs have standing. *Cf. B. F. Goodrich Co.* v. *Federal Trade Commission*, 93 U.S. App. D.C. 50, 56, 208 F. 2d 829, 834. The case is remanded with instructions to rule on the motion to dismiss, unless the government withdraws it or the plaintiffs concerned consent to it. As against plaintiffs who are not dismissed, judgment should be entered for the defendant.

Reversed and remanded.

DANAHER, *Circuit Judge*, concurring: I concur in the entire opinion by Chief Judge Edgerton.

I feel compelled to say this: were it not for *Textile Workers Union of America, CIO* v. *The Allendale Company, et. al.*,[1] I would dismiss 144 plaintiffs on the present record. Moreover, I believe the District Court should have denied intervention by defendants National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, Hathaway Manufacturing Company and the Textile Workers of America, CIO, who are now here as appellants on the side of the Secretary.

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terms 'locality', 'regular dealer', 'manufacturer', and 'open market'." 41 U.S.C. § 43a(c). That is, a contractor who has been required to include a minimum wage stipulation in a contract need not perform the stipulation if the requirement was not in accordance with law. This is irrelevant here.

[1] 96 U.S. App. D.C. 401, 226 F.2d 765, decided July 15, 1955. But see the dissenting opinions.

The Supreme Court held[2] in 1940 that determinations by the Secretary under the Walsh-Healey Act[3] as it then was written, are not judicially reviewable. The Act "was not intended to be a bestowal of litigable rights upon those desirous of selling to the Government; it is a self-imposed restraint for violation of which the Government—but not private litigants—can complain."[4] The function of the Secretary, acting in behalf of the Government, is to find the facts,[5] and make his determination which shall be conclusive upon all agencies of the United States. The Act was designed to permit the Government to supply its needs without the delays necessarily incident to judicial supervision of administrative procedure. "If the general law permits prospective bidders to challenge each wage determination of the Secretary in the courts, by a like token all employees affected could obtain judicial review."[6] We have been advised that "Courts should not, where Congress has not done so, subject purchasing agencies of the Government to the delays necessarily incident to judicial scrutiny at the instance of potential sellers, which would be contrary to traditional governmental practice and would create a new concept of judicial controversies."[7] Not only do such expressions by the Court correctly, in my opinion, reflect the understanding and purpose of the Congress, but this case illustrates peculiarly the situation which Congress sought to avoid. It is now nearly three years since the Secretary's determination was promulgated, and it is no more

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[2] Perkins v. Lukens Steel Co., 310 U.S. 113, 128 (1940).

[3] 49 STAT. 2036-2040 (1936), as amended, 41 U.S.C. §§ 35-45 (1952).

[4] *Supra* note 2, 310 U.S. at 127.

[5] § 4, 49 STAT. 2038 (1936), as amended, 41 U.S.C. § 38 (1952); (re the fact-finding function see Shannahan v. United States, 303 U.S. 596, 599 (1938)).

[6] *Supra* note 2, 310 U.S. at 131.

[7] *Id.* at 130.

nearly effective now than when it was first made. Yet 144 plaintiffs and 5 defendants as "parties" in the District Court still, because of their status as parties, respectively have rights of appeal no matter which way our order goes.[8]

It is said that these "parties" are thus able completely to frustrate the reasonable fulfillment of the Congressional objective because "rights" have been conferred upon them by the Fulbright amendment,[9] adopted in 1952. In terms it was provided that review "may be had within 90 days after such determination is made," and ten of the original plaintiffs sought review after the 90 day statutory period had expired. As to them the motion to dismiss should be granted. The Fulbright amendment further provided that review was to be had only "by any person adversely affected or aggrieved" by the determination. Only 14 plaintiffs have made a showing that the determination "results in direct and immediate injury."[10] So, I would dismiss as to 144 "plaintiffs," leaving only the 14 in the Alabama case and none in the Covington case. The named intervening appellants by the Secretary's determination have not been subjected to or threatened with any legal wrong. They have shown no independent legal right. They are not "private Attorney Generals,"[11] and the Secretary is ably represented here by the Attorney General. Even the Fulbright amendment confers no standing upon those who appear on the side of the Secretary. I believe their intervention never should have been allowed.

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[8] Cf. Fishgold v. Sullivan Corp., 328 U.S. 275 (1946); Boston Tow Boat Co. v. U. S., 321 U.S. 632, 633 (1944).

[9] 41 U.S.C. § 43(a) (1952).

[10] National Coal Ass'n v. Federal Power Commission, 89 U.S. App. D.C. 135, 138, 191 F. 2d 462, 465 (D.C. Cir. 1951).

[11] Associated Industries v. Ickes, 134 F. 2d 694, 704 (2d Cir. 1943), *order vacated*, 320 U.S. 707 (1943). The able opinion by Judge Frank treats of almost every conceivable situation except that presented on the record here.

This is not a case involving a determination of public convenience and necessity such as *National Coal Ass'n* v. *Federal Power Commission*.[12] This is not a case like *Columbia System* v. *United States*,[13] where "the regulations purport to operate to alter and affect adversely appellant's contractual rights and business relations with station owners whose applications for licenses the regulations will cause to be rejected and whose licenses the regulations may cause to be revoked." This is not a case like *Associated Industries* v. *Ickes*,[14] where by administrative order, the minimum prices at which coal could be sold were increased, thus affecting the very basis upon which transactions in the coal business could be conducted. Nor is the case like *United States Cane Sugar Refiners' Ass'n* v. *McNutt*,[15] or *Longshoremen's Union* v. *Boyd*,[16] where the suit was dismissed for want of a "case or controversy." This is a case, *sui generis*, where "Congress, as incident to its power to authorize and enforce contracts for public works, may require that they shall be carried out only in a way consistent with its views of public policy . . ."[17] No one is forced to bid for Government contracts. Not foreign to our problem are the considerations reasoned by this court in *Alabama Power Co.* v. *Ickes*.[18] I believe the Congressional interest in the attainment of the objectives of the Walsh-Healey Act and the Government's undoubted

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[12] *Supra* note 10. (Even there Judge Clark, in his dissent, argued well that the petitioners were not "parties aggrieved" within the meaning of the Natural Gas Act.)

[13] 316 U.S. 407, 422 (1942).

[14] *Supra* note 11.

[15] 138 F. 2d 116 (2d Cir. 1943) (where the petition was dismissed for lack of jurisdiction).

[16] 347 U.S. 222 (1954). (The point is certainly present here.)

[17] Ellis v. United States, 206 U.S. 246, 256 (1907).

[18] 67 App. D.C. 230, 91 F. 2d 303 (D.C. Cir. 1937), *aff'd*, 302 U.S. 464 (1948).

right to lay down the conditions upon which its own business will be conducted compel a strict construction of the Fulbright amendment. Any other view makes a shambles of the Walsh-Healey Act, for the delays and confusion occasioned by the hordes of "parties" render a determination obsolete and ineffective. Thus those who properly may be parties are those, and only those, who can show themselves by direct and immediate injury to have been adversely affected or aggrieved by the Secretary's determination.

WASHINGTON, *Circuit Judge*, dissenting: The central issue here, of course, is whether the Walsh-Healey Act was intended to establish a nation-wide wage standard for Government contractors, or a standard based on wages prevailing in the contractor's own community. To my mind the language of the statute clearly establishes the latter standard. This court so held in a case decided shortly after the passage of the Act. *Lukens Steel Co.* v. *Perkins*, 70 App. D.C. 354, 107 F. 2d 627 (1939). The opinion—an exhaustive one—was written by Associate Justice Justin Miller, and was concurred in by Associate Justice Fred M. Vinson, who had become a member of this court after serving in Congress during the very period in which the Walsh-Healey Act was passed. The reasoning of the opinion seems to me unanswerable. And the legislative history there recited shows with complete clarity what Congress intended: that bidders for Government contracts "shall pay the prevailing wages in the community where the work is performed."[1]

Our decision in *Lukens* was reversed by the Supreme Court on another ground—that the complainants lacked standing to sue. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 (1940). The obstacle has now been removed by the Fulbright Amendment, passed in 1952. 41 U.S.C. § 43a (1952).

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[1] Congressman Greenwood at 80 Cong. Rec. 9993; quoted at p. 362 of 70 App. D.C. p. 635 of 107 F. 2d, together with numerous similar statements.

Technically, in dealing with the present case, we are not "bound" by our decision in *Lukens*, even though the Supreme Court did not reach the merits of that case. But its reasoning remains sound, and has not been disturbed by anything which has happened since. As far as the argument based on continued administrative interpretation is concerned, I would suppose that we were not entitled to give much weight to action which was until a short time ago completely immune to judicial review. Nor, under the circumstances here, does congressional failure to amend an act already clear on its face seem to be in any sense declaratory of the correctness of the Secretary's interpretation. The latest pronouncement of Congress—the Fulbright Amendment—certainly makes no such declaration: its passage might suggest, indeed, that Congress was not content with the Secretary's action, and wished it to be reviewed by the courts. The relevant Committee Report specifically states that failure to amend the "locality" provision of the Act is to be without prejudice to a judicial determination of the meaning of that provision. S. Rep. No. 1599, 82d Cong., 2d Sess. 31 (1952).

It is argued that to give the "locality" provision its ordinary meaning would produce an undesirable result. But—whether or not that is so—our function is to determine what Congress thought desirable, rather than to give expression to our own views on social legislation. It is also said that the purpose of the Act would be defeated by such an interpretation. But I think the majority misconceives the purpose of the Act, as revealed in the light of conditions prevailing in 1936, when it was passed. At that time, and before, it was generally thought that the Federal Government lacked power to undertake broad regulation of wages and labor standards. Control of Government contracts was thought possible, however, and in 1931 the Bacon-Davis Act was passed, imposing certain wage regulations in the field of Government construction contracts, 46 Stat. 1494. In 1935 that A-

was substantially revised and strengthened, 49 Stat. 1011. The 1935 revision provided—in language derived from the earlier legislation—for wage determinations based on conditions prevailing in the "city, town, village, or other civil subdivision" where the contract is to be performed. In 1936 the Walsh-Healey Act was passed to cover the field of supply contracts. Here Congress used the "locality" provision we have been discussing. Obviously both acts are based on the same philosophy and point to a standard limited to a fairly small area and to a restricted objective: that of preventing contractors from cutting wages below prevailing community levels in an effort to pare costs and thus be the lowest bidder. As the legislative history shows, there was no thought of raising wages, or of eliminating regional differentials. See *Lukens* at p. 362 of 70 App. D.C., 635 of 107 F. 2d.

Later, of course, greater breadth of Federal power was recognized. The Supreme Court's decision in *National Labor Relations Board* v. *Jones & Laughlin Steel Co.*, 301 U.S. 1 (1937), opened the door to more sweeping congressional action. Problems such as that of the "runaway industry," which were not intended to be dealt with by the Walsh-Healey Act, but which may underlie the Secretary of Labor's approach to that Act, may now be dealt with by explicit Federal legislation. Congress has gone far in this direction through the Fair Labor Standards Act and its amendments. Indeed, under an amendment shortly to come into effect, the minimum F.L.S.A. wage will be raised to a dollar an hour. Public Law 381, 84th Cong., 1st Sess. § 3 (1955). That, of course, is the same as the Secretary's determination here. Surely it is better to reach decisions of that sort through congressional debate and action, rather than through strained administrative and judicial interpretation of a statute passed years ago for a different and more limited purpose.

APPENDIX D

UNITED STATES DEPARTMENT OF LABOR

Washington, D. C.

TITLE 41—PUBLIC CONTRACTS

PART 202—MINIMUM WAGE DETERMINATIONS

NOTICE OF PROPOSED AMENDMENT TO THE DETERMINATION OF THE PREVAILING MINIMUM WAGE FOR THE TEXTILE INDUSTRY

This matter is before the Department pursuant to the Act of June 30, 1936, (49 Stat. 2036; 41 U.S.C. 35) as amended by the Defense Production Act Amendments of 1952, (Sec. 310, P. L. 429, 82nd Congress), entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes," and known as the Walsh-Healy Public Contracts Act.

The Secretary of Labor, in a minimum wage determination issued pursuant to the provisions of the Walsh-Healey Public Contracts Act and made effective November 16, 1948 (13 F.R. 6683), determined the minimum wage for persons employed in the Textile Industry in the performance of contracts with agencies of the United States Government subject to the Act to be not less than 87 cents per hour. This determination also authorized employment of learners in specified occupations at rates not less than 80 cents an hour for a learning period not longer than 240 hours. This determination is currently in effect as editorially revised and published in the Federal Register on July 20, 1950 (15 F.R. 4634).

The Textile Workers Union of America, CIO, submitted a petition dated January 23, 1952, for determination of a minimum wage of $1.155 an hour in the Textile Industry with a wage escalator provision of one cent quarterly adjustment for each 1.32 rise in the Consumer's Price Index

(Old Series) beginning with February 15, 1951, and urged retention of the currently effective definition of the Industry.

The United Textile Workers Union, AFL, submitted a petition, dated March 4, 1952, for determination of a minimum wage of $1.13 an hour with an escalator clause and the other so-called fringe benefits of vacations with pay and holiday and shift premiums as provided in its collective bargaining agreements.

Representations in these petitions with respect to current wage rates provided in collective bargaining agreements and other wage data reported from time to time by textile manufacturing establishments and associations indicated that the 87-cent rate now in effect may not reflect the prevailing minimum wages in the Textile Industry. This proceeding was, therefore, initiated for the purpose of consideration of an amendment to the current determination which will reflect the minimum wages now prevailing.

An informal panel conference was held on March 4, 1952 at which representatives of the Department of Labor met with representatives of management and labor in the Textile Industry and discussed various matters concerning the Textile Industry, including questions of definition of the Industry and the obtaining of adequate wage information.

GENERAL

Notice of a hearing in this matter to be held on September 4, 1952 was published in the Federal Register on July 26, 1952 (17 F.R. 6871). Copies of the notice and a press release announcing the hearing were mailed to trade associations, unions, and to individual companies in the Industry. In addition, the press release was distributed to newspapers and trade publications.

This notice and release advised interested persons of the time and place at which they could appear and offer

testimony; (1) as to what are the prevailing minimum wages in the Textile Industry; (2) as to whether there should be included in any amended determination for this Industry provision for employment of learners, beginners and/or apprentices at subminimum rates, and if so, in what occupations, at what subminimum rates, and with what limitations, if any as to length of period and number or proportion of such subminimum rate employees; and (3) as to the propriety of the present definition of the Industry as set out in the notice of hearing. The notice stated that "The following information is particularly invited with respect to the subject matter of the testimony or statements of each witness; (1) the number of workers covered in the presentation; (2) the number and location of establishments; (3) minimum wages paid at the end of a probationary or learner period, the number of workers receiving such wages, and the occupations in which these employees are found; (4) the entrance rate for learners, beginners or probationary workers, the length of such learning or probationary period, and the number of workers paid such entrance rates; and (5) the product or products made by the establishments included." The notice further stated that "To the extent possible, data should be submitted in such a manner as to permit evaluation thereof on a plant by plant basis."

A notice of change of the hearing date and place to 10 a.m. September 3, 1952 in Conference Room A of the Departmental Auditorium in Washington, D. C. was published in the Federal Register on August 8, 1952 (17 F.R. 7255) and was given the same informal distribution to the press and interested employer and employee organizations as the original notice.

The hearing was held on September 3, 4, and 5, 1952, pursuant to the notice and the Rules of Practice for Minimum Wage Determinations under the Walsh-Healey Public Contracts Act (17 F.R. 7944). Representatives of em-

ployees and employers appeared at the hearing to present evidence and testimony, and the record was kept open for a specified period beyond the close of the hearing for receipt of additional data and briefs.

Management appearances at the hearing included representatives of the National Cotton Manufacturers Association, the American Cotton Manufacturers Institute, the Association of Cotton Textile Merchants of New York and of several textile establishments. Labor appearances included representatives of the Textile Workers Union of America (CIO) and the United Textile Workers Union (AFL).

In addition letters, statements and briefs were filed by interested parties both at the hearing and following the close of the hearing. All such material has been made part of the record herein. The hearing record was closed as of October 29, 1952.

DEFINITION

The currently effective definition proposed for adoption in the Notice of Hearing reads as follows:

(a) Definition. For the purpose of this determination the term "Textile Industry" means:

(1) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs containing any wool) from cotton, flax, jute, other vegetable fiber, silk, grass, or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in clauses (7) and (8); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in establishments manufacturing synthetic fiber;

(2) The manufacturing of batting, wadding, or filling and processing of waste from the fibers enumerated in clause (1);

(3) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics or cords (except carpets and rugs containing any wool) from any fiber or yarn;

(4) The processing of any textile fabric, included in this definition of this industry, into any of the following products: Bags, bandages and surgical gauze, bath mats and related articles, bedspreads, blankets, diapers, dishcloths, scrubbing cloths and washcloths, sheets and pillow cases, tablecloths, luncheloths, napkins, towels, window curtains, shoelaces and similar laces;

(5) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(6) The manufacturing of cordage, rope or twine from any fiber or yarn including the manufacturing of paper yarn and twine;

(7) The manufacturing or processing of yarn (except yarn containing any carpet wool) or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in clause (1), containing not more than 45 percent by weight of wool or animal fiber (other than silk);

(8) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 percent by weight of wool or animal fiber (other than silk), with any of the fibers designated in clause (1), with a margin of tolerance of 2 percent to meet the exigencies of manufacture;

(9) The manufacturing, dyeing, finishing or processing of rugs, or carpets from grass, paper, or from any yarn or fiber except yarn containing any wool but not including the manufacturing by hand of such products.

The definition as proposed in the Notice of Hearing is that contained in the determination now in effect for the Industry.

At the hearing there were introduced into the record letters from five concerns recommending that the proposed definition be modified to exclude "varnished fabrics" on the grounds that these products are not generally made in plants making the other products included in the definition and further that the industrial processes required and the wages paid differ from those in the Textile Industry generally. In this connection, Mr. Verl E. Roberts, Assistant Administrator of the Wage and Hour and Public Contracts Divisions, stated for the record that the Divisions have ruled that the present definition does not cover varnished cloth, artificial leather, oil cloth, window shade cloth, linoleum, felt-base floor covering, dental floss, buckram, waxed cloth, and plastic-coated cloth.

The representative of the Textile Workers Union of America argued that coating and impregnating are normal parts of the dyeing and finishing industry. However, it appears from a later statement of this representative and from the Census of Manufactures, 1947, that while dyeing and finishing plants do, to some extent, perform such coating and impregnating operations, the greater proportion of these operations are performed in plants which specialize in this field.

On the basis of the record, therefore, I find that the definition of this industry should continue to exclude such coated or impregnated textile products as varnished cloth, artificial leather, oil cloth, window shade cloth, linoleum,

felt base floor covering, dental floss, buckram, waxed cloth and plastic-coated cloth.

The National Association of Wool Manufacturers, in a letter accepted for the record argued that the definition of the industry should be modified to exclude any product presently included which contains any proportion of wool or man-made fibers (other than rayon or acetate). Moreover, the Association recommended, as it had previously at the public hearing in the Matter of the Redetermination of the Prevailing Minimum Wages in the Woolen and Worsted Industry, held on May 15, 1952, that these products, that is, products containing any portion of wool or man-made fibers (other than rayon or acetate), should be included in the definition of the Woolen and Worsted Industry. The adoption of this proposal would have the effect of removing from the definition of the Textile Industry a great variety of items made from mixtures containing minor proportions of wool or any proportion of man-made fibers (other than rayon or acetate) which are normally manufactured by firms engaged primarily in the production of cotton or synthetic rather than woolen or worsted textiles.

The present lines of demarcation between the Textile Industry, and the Woolen and Worsted Industry and the Knitting, Knitwear and Woven Underwear Industry, which would also be affected if the proposal were adopted, are based on traditional industry concepts which have been recognized by the Bureau of the Budget, the Bureau of the Census and in the administration of the Fair Labor Standards Act and the Public Contracts Act. While there is an indication of certain trends which may in time justify a reevaluation of these dividing lines, it does not appear that such shifts as have occurred would warrant a change at this time. Consequently, I find that the request of the National Association of Wool Manufacturers should be denied at this time and that the present definition should not be changed in this regard.

With the exception of the two points mentioned above the only other proposals with respect to the definition were made by the petitioners and three independent unions in the textile field all of whom recommended that the present definition of the Textile Industry be retained. The other parties present made no proposals either for or against the retention of the present definition. As indicated below, adequate wage data are available in this proceeding only for the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry and I am proposing at this time a redetermination of the prevailing minimum wage only for this branch, which is defined at the conclusion of this proposed determination.

NATURE OF AVAILABLE WAGE DATA.

As a part of its regular program of conducting wage surveys of important industries, the Bureau of Labor Statistics made a study of earnings and related wage practices in the cotton and synthetic textiles industries. These surveys which relate to a payroll period in March, 1952 covered a large number of firms and employees in the Textile Industry and constitute the primary data upon which a determination of prevailing minimum wages in this industry can be based.

The first of these surveys relates to establishments in the following categories: broad woven fabric mills primarily engaged in weaving cotton fabrics over 12 inches in width; cotton yarn mills primarily engaged in spinning, twisting, winding or spooling cotton yarn; and cotton thread mills. The second survey includes establishments in the following categories: broad woven fabric mills primarily engaged in weaving fabrics of spun or filament silk, rayon, nylon or other synthetic fabrics over 12 inches in width; yarn mills primarily engaged in manufacturing spun yarns from silk, rayon, nylon, or other synthetic staple fiber products; yarn throwing mills engaged in re-

winding, twisting, plying, and packaging of filament silk, rayon, nylon or other synthetic fibers; and thread mills manufacturing thread from silk, rayon, nylon or other synthetic fibers. In addition to workers engaged in producing these items, the surveys, cover other workers in these establishments engaged in producing fabricated textile products and in dyeing and finishing operations.

The Bureau of Labor Statistics published the results of these surveys in separate releases for cotton and for silk and synthetic textiles. Subsequently, the Bureau prepared additional tabulations at the request of the Wage and Hour and Public Contracts Division. The original releases plus these additional tabulations are contained in Government Exhibits 18 through 24. After the hearing a need arose for additional tabulations and the Bureau of Labor Statistics prepared a series of supplementary tabulations which were also based on information contained in the two surveys. These latter Bureau of Labor Statistics tabulations are hereby made a part of the record and are available to any interested party for examination and comment. For purposes of reference these tables are identified as Supplementary Government Exhibits A-1 through A-8.

The American Cotton Manufacturers Institute employed a statistical agency to conduct a mail questionnaire survey of firms manufacturing textiles and related products. However, the Institute was unwilling to present for the record more than a fragment of the tabulations which had been prepared from the survey and which the Department had been given to understand would be available. The data offered for the record include a tabulation by county of average minimum wages, weighted by number of establishments, for each county in its survey from which two or more establishments submitted replies to the questionnaire, except where such minima were identical. Subsequent to the hearing, the Institute presented a similar tabulation showing county averages weighted by number

of employees. These data include watchmen and others of the custodial group not covered by the Act. In addition, they include the earnings of workers engaged in the manufacture of products not included in the definition of the Textile Industry. Even if these limitations were not present, however, it is evident from the data that the ACMI approach would inevitably lead to illogical and inequitable variation in the determined minimum wage from one community or county to another. For example, the Institutes survey reported an average minimum wage weighted by employees for Tallapoosa County, Alabama of 101.3 cents an hour. The comparable rates for four nearby counties, three of which are contiguous and one of which is one county removed, were as follows: Chambers, 92.1 cents; Lee, 89.7 cents; Elmore, 99.7 cents; and Talladega, 102.7 cents. It is clear also that whatever separation might be made within the counties, on a community basis, or however the communities or counties were aligned, equally, disparate results would ensue.

The Textile Workers Union of America and the United Textile Workers of America submitted copies of a number of collective bargaining agreements and lists showing the names and locations of plants in the industry, the type of products manufactured, employment and minimum wages paid. These lists include both union and nonunion establishments and cover a large proportion of the Industry.

In addition, information on average hourly earnings from the Bureau of Labor Statistics, employment and production figures from the Census of Manufactures and copies of collective bargaining agreements on file with the Bureau of Labor Statistics were available to the Department.

LOCALITY

In each of the three previous wage determinations for this industry under the Public Contracts Act a single wage was recognized as the prevailing minimum wage in the industry throughout the United States. At the hearing before the Examiner in the present proceeding arguments were presented with regard to whether recognition of a single nation-wide rate for this industry would be consistent with the statutory language and intent of the Public Contracts Act. It was argued by counsel representing the ACMI and a number of other textile manufacturers that the "locality" language of section 1(b) of the Act[1] requires that minimum rates be established by small geographic areas such as communities in which textiles are produced. The ACMI suggested that in some situations a county or even groups of counties could be considered as a locality. It further suggested that the "locality" comprised of groups of counties need not be confined within state lines but might run through more than one State depending on the various factors and circumstances which might be present. In presenting these arguments no attempt was made to list or otherwise define the factors or circumstances which should be taken into account in determining the limits of such localities and, in fact, it was conceded by counsel that neither they nor the firms they were representing were prepared to offer any concrete criteria which might be applied in delineating such localities.

[1] Section 1(b) reads as follows: "That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract".

The National Association of Cotton Manufacturers and both of the unions participating in the hearing presented arguments and data in support of a single minimum wage for the Industry. A post-hearing brief filed by the NACM presented a number of arguments to show that the statutory language and the purpose and intent of the Public Contracts Act require a construction which would permit recognition of an industry-wide minimum, and that all of the factors present in the Textile Industry require that a single industry minimum be recognized in this case.

I have carefully weighed all of the arguments presented and I have considered in detail all of the voluminous data contained in the record in attempting to arrive at a proper determination of these questions. Before undertaking a discussion and analysis of the wage data the legal aspects of the arugments presented on the locality question should be dealt with.

It is abundantly evident from the legislative history of the Act that its purpose was to prevent the flow of Government business into the hands of firms that pay substandard wages and maintain low employment standards. Its purpose was, in short, to bring about a situation where employers paying fair and reasonable wages would not lose out on Government business to low-paying firms. Under the system of competitive biding adhered to by the Government, the various contracting agencies must accept the lowest responsible bid. Obviously, in an industry which utilizes standard equipment and has approximately the same raw material costs, any substantial differences in wages would be reflected in bids submitted on Government work. In recognition of this fact and in order to encourage the maintaining of fair wage standards Congress enacted the Public Contracts Act.

With this Congressional purpose in mind, the specific language of the Act must be construed. Any construction of the locality language would result in freezing the lows

and the highs in wages would certainly not carry out the purpose of the Act. In other words, if the dominant plant or plants in community A were paying substantially lower wages than plants in community B, the recognition of community A and community B as separate localities would mean that plants in A could continue to underbid plants in B and the situation would be frozen at that level.

The legislative history of the Act indicates clearly that Congress gave serious and lengthy consideration to the possible approaches to the problem of arriving at appropriate minimum wages. In recognition of the difficulties inherent in this field, Congress decided to vest in the Secretary of Labor the administrative function of carrying out the minimum wage provisions of the law and established certain criteria to guide the Secretary of Labor in such functions. The factors which have a bearing on minimum wages present such a pattern of diversity from industry to industry as to render any single formula for determining prevailing wages impractical. Consequently, Congress wisely allowed a degree of administrative discretion to be followed by the Secretary of Labor in applying the criteria laid down in the Act. The statute, accordingly, directs the Secretary of Labor to determine prevailing minimum wages in accordance with three distinct standards, namely, the prevailing minimum wages for persons employed 1) on similar work or 2) in the particular or similar industries or 3) in groups of industries currently operating in the locality in which the contract is to be performed. In the context of the Act it seems proper to conclude that the phrase "currently operating in the locality" was intended to qualify only groups of industries and does not limit "similar work" or "particular or similar industries."

It is clear, then, considering the broad administrative powers provided throughout the Act, that it was the Congressional intent to give the Secretary of Labor substan-

tial latitude in regard to determining prevailing minimum wages and to apply any one or combination of the criteria enunciated in the Act in order to properly carry out the purposes of the Act.

The evidence in the record discloses certain predominant characteristics of the Textile Industry as follows: the Industry is principally located in three sections of the country, New England, the Middle Atlantic States and the South. Competition in the Industry is nation-wide in scope and marketing of the products of the Industry is similarly on a national scale. Only in rare instances is there found a situation where a mill markets its product within a limited geographic area. Most textile producers maintain sales representatives or agents in the textile center known as Worth Street in New York City and the vast bulk of textiles are sold through such center. Producers of textiles in such widely separated areas as Maine and Alabama compete for the same business in the Worth Street market. It is not uncommon for mills in different sections of the country to perform different production operations on a given lot of textile fabric. For example, textile gray goods woven in South Carolina may be shipped to New Jersey or Rhode Island for finishing operations consisting of bleaching, dyeing, printing, etc. The goods are then sold on the New York market and may be shipped to customers in Maine, California, Florida or any other place in the United States, or elsewhere in the world.

The record shows also that Government purchases of textiles are not confined within any geographic limits. In the normal case the Government invites bids from firms located in *every textile producing area* and bids are received from mills in widely separated regions. Pursuant to a single invitation to bid, contracts for a particular item may be awarded to mills in a number of different States. In some instances various steps in the processing of textiles required under a Government contract will take

place in different States and different regions. A single firm bidding on Government contracts will frequently be found to have a number of different mills located in different States or areas. In no instance is it possible for a Government contracting agency to have any knowledge of the locus of production prior to receipt of bids and award of contracts. In other words, there is no way of ascertaining in advance where a proposed Government textile award may be carried out.

From all of the facts referred to above, it is evident that the predominant factors in the Textile Industry do not point toward any regional or geographic differences in terms of industry characteristics, and that, in an economic sense, the locality of the industry is very broad. Based upon these considerations, I have concluded that the factors present here do not warrant application of the last of the three criteria contained in section 1(b) of the Act, namely, the minimum wages for persons employed in "groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract."

It is my considered judgment, moreover, that even if the "locality" language of the Act is construed as limiting the entire wage determination function, it is not necessary to impose a narrow geographic connotation on such language in such a manner as to frustrate the entire purpose for which the statute was enacted. While it is true that the term locality is commonly used to denote a geographic locus or unit the term possesses sufficient flexibility in meaning to convey a broad or narrow sense depending upon the context in which it is used. The word must, therefore, be construed within the context of the Act and consistent with the intent and purpose of the Act. As I have previously stated I believe it would be illogical to select this word out of the Act and give it a meaning which would cancel out the entire purpose for which the Act,

was conceived. Furthermore, since the time the Public Contracts Act was enacted minimum wage determinations under this Act for numerous industries have recognized a single nation-wide minimum wage. In only a few industries smaller localities were recognized. It is reasonable to assume that if this construction of the Act did not comport with the Congressional intent Congress would have acted to alter the construction. The fact that Congress, over a period of 16 years, did not alter the statutory language, even after repeated requests, warrants a conclusion that the construction placed on such language by the Department of Labor conforms with the Congressional purpose. Consequently, even on this basis, and considering the record of this proceeding, I find that the locality in which the products of the textile industry are to be manufactured or furnished under Government contracts is coextensive with the entire area in which the industry operates, and that the rate determined herein for the textile industry is the rate prevailing in such locality.

Within the framework of these considerations I have analyzed the available wage data to arrive at a proper determination of prevailing minimum wages in this industry.

ANALYSIS OF WAGE DATA

In the surveys of the cotton and synthetic (and silk) textile industries, the Bureau of Labor Statistics tabulated returns from 467 establishments, employing 289,923 employees. The surveys were limited to plants with 21 or more employees. For plants in this size group, the Bureau's returns covered 40.8 percent of the establishments employing 55.7 percent of the workers. The Census of Manufactures for 1947, the latest available period, indicates that plants with 21 or more employees in these two branches of the textile industry had 99.5 percent of all workers in these branches. The returns were weighted

in accordance with generally accepted statistical procedures to represent all the plants and employment in *plan* plants with 21 or more workers in the branches surveyed.

As noted above, the Bureau of Labor Statistics surveys were limited to plants primarily engaged in spinning or throwing yarn or thread and related operations or in weaving broad woven fabrics. However, since a number of these plants also produced fabricated products such as sheets, pillow cases, towels, and wash cloths and performed dyeing and finishing operations, wages of workers manufacturing these fabricated items and performing dyeing and finishing operations in such establishments are included in the survey and reflected in the tabulations. A letter received from Maxwell R. Conklin, Chief, Industry Division, Bureau of the Census, dated November 6, 1952, states that in the year 1947, 64 percent of all sheets and pillow cases and 95 percent of all towels and wash cloths were produced in integrated establishments, i.e., establishments engaged in spinning and weaving but also producing fabricated items. The information from Mr. Conklin also indicates that only 22 percent of all bedspreads and bedsets and only 2 percent of such textile house furnishings as laundry bags, blankets, pillows and slip covers (other than sheets, pillow cases, towels, wash cloths, bedspreads and bedsets) were produced in integrated establishments. For purposes of reference the letter received from Mr. Conklin is hereby made part of the record and is identified as Supplementary Government Exhibit B.

A number of wage reductions occurred in New England plants between the date of the survey and the date of the hearing, but these changes did not affect the surveys' data for intervals below $1.06½. With this exception, no question as to the adequacy and accuracy of the surveys was raised by either of the petitioners or the National Association of Cotton Manufacturers. However, representatives of the American Cotton Manufacturers Institute raised a num-

be of questions relating to the sampling procedures used by the Bureau in making the survey, and questioned the method followed by the Bureau in obtaining the information on plant minimum entrance rates and plant minimum job rates. With respect to the sampling methods used, it is clear from the testimony of Harry M. Donty, Chief, Division of Wages and Industrial Relations, Bureau of Labor Statistics, that the Bureau, in making these surveys, followed professionally-accepted statistical practices. It is also clear from the testimony that the objections raised with respect to the sampling procedures show an unfamiliarity on the part of the Institute representatives with these standard statistical procedures. There is no question from the evidence in the record that the Bureau of Labor Statistics gave proper weight to both large and small plants, took into account the different types of products included in its surveys and adequately covered all parts of the country. It is also clear from the record that the sample obtained by the Bureau was more than sufficient to assure adequate coverage and results.

I conclude, therefore, that the surveys are properly representative of all establishments included within the scope of the definitions of the cotton and synthetic (and silk) textile industries used by the Bureau.

I also conclude that the Bureau of Labor Statistics wage data adequately reflect wages of workers producing sheets, pillow cases, towels and wash cloths but contain insufficient information on workers producing bedspreads, bedsets and other textile house furnishings. Moreover, these data do not provide a basis upon which a finding can be made as to the prevailing minimum wages for certain other products and operations now included in the definition of the Textile Industry, namely, batting, wadding and filling; the processing of waste; narrow fabrics (fabrics 12 inches or less in width); bags; bandages and surgical gauze; bath mats and related articles; diapers; braid and lace; cordage, rope and twine; and carpets and rugs.

The American Cotton Manufacturers Institute also offered testimony of one witness and telegrams and letters from four companies, designed to show that the Bureau of Labor Statistics had excluded certain low-paid workers from the survey. The witness was Robert K. Argo, Personnel Manager of the Alabama Mills, Inc., who testified with respect to his conversation with the field representative of the Bureau who obtained information from the Clanton, Alabama, plant of the company.

Mr. Argo stated that the Bureau's field representative did not obtain any information with respect to employees whose wages were below $1.015 per hour in the Clanton plant, although according to his recollection at the time of the survey the plant had about 15 employees paid 97 cents, the only rate below $1.015 paid in the plant. Mr. Argo also testified that the field agent told him specifically that in accordance with instructions, no data for custodial employees were being recorded.

There has been received in the record a deposition made by Harry M. Douty clarifying portions of the testimony at the hearing regarding Mr. Argo's statement. This deposition shows clearly that, under the instructions given to the Bureau's representatives, wages of custodial employees were to be excluded only in connection with information obtained on minimum plant entrance rates and minimum job rates. With respect to all other information, however, the instructions were specific that the Bureau's representatives were to survey the earnings of all workers in the plant, including custodial employees. Consequently, the earnings of employees earning less than the plant minimum job rate are included in all tables except Tables 4, 5, and 6 of Government Exhibits 18, 19, and 20, both with respect to the Clanton plant of Alabama Mills, Inc., and with respect to all other mills included in the survey. The deposition states the Bureau's original schedule for the Clanton plant showed 14 workers earning 97 cents; eight of these were

reported as janitors and properly excluded from Tables 4, 5, and 6, under the Bureau's instructions. All 14 of these workers were included in the other tables. The six workers other than janitors, reported by the Bureau to be paid 97 cents were not employed in any of the selected occupations for which specific information was obtained. I cannot conclude from the record that these six workers should have been included in Tables 4, 5, and 6. It is obvious, however, that Mr. Argo's contention that no workers in the Clanton plant paid less than $1.015 per hour were included in the Bureau's survey is without merit.

As noted above, four companies submitted statements in the form of telegrams dealing with this general subject. The Summerville Manufacturing Company, Summerville, Georgia, stated that the minimum wage in that plant was 96.5 cents an hour, a rate paid on the following jobs: scrubbers, yardmen, and cotton truckers. The deposition by Mr. Douty shows that the Bureau reported this plant as paying a minimum job rate of 96.5 cents. This rate was also reported as the minimum entrance rate. The Bureau's record also shows that 16 employees were classified as janitors, three of whom were paid 96.5 cents. The other 13 janitors were paid in excess of this figure. The other three companies, the Pacolet Manufacturing Company, Pacolet, South Carolina, Julia Cade Mills, Inc., Albertville, Alabama, and Whittier Mills Company, Chattahoochee, Georgia, also in telegrams read at the hearing and in later letters supplied information as to minimum wages paid and the occupations to which these rates apply. Mr. Douty's deposition shows that four plants of Pacolet Manufacturing Company were included in the original sample for the survey. The plants were visited by the Bureau representatives, but in each case the company declined to furnish information. The Bureau in consequence substituted other mills of the same general characteristics in accordance with well-established statistical sampling procedures. With respect to Julia Cade Mills, and Whittier Mills, neither was included in the

sample for the survey and no Bureau of Labor Statistics information is available.

It should be noted from the letters received from these companies that with the exception of plants No. 3 and 5 of the Pacolet Company, the lowest rate in the plant is paid to sweepers or scrubbers, which occupations were classified by the Bureau of Labor Statistics for the purpose of this survey in the janitorial category.

On the basis of the evidence, I find that the data in the Bureau's tables showing minimum job rates were accurately collected and compiled and may properly be used in evaluating the prevailing minimum wage practices in the Cotton, Silk, and Synthetic Branch of the Industry.

As indicated heretofore, one of the bases which may be used by the Secretary of Labor in determining prevailing minimum wages is that of "similar work."

With respect to this criterion, evidence in the record points particularly to three occupations which are substantially the same in job content, are common to most firms in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry, and are generally the lowest paid occupations. These occupations are: janitors (excluding machinery cleaners); battery hands; and hand truckers (including bobbin boys.) These occupations were included within the list of "selected occupations" for which the Bureau of Labor Statistics reported separate data. This list, together with the job descriptions applicable thereto, were developed as a result of the Bureau's extensive experience in making surveys of the industry and in consultation with representatives of labor and management. The definitions were designed to permit comparisons between occupations having similar work content in various plants or groups of plants in the industry, regardless of variations from plant to plant in actual nomenclature. There was no criticism in the record that these occupations individually did not

have in fact similar content. In consequence, from the record as a whole, it is clear that prevailing minimum wages for "similar work" can be determined by examining data for these individual occupations.

The three occupations are defined by the Bureau as follows: *Janitor (day porter, sweeper, charwoman, janitress)*: cleans and keeps in an orderly condition factory working areas and wash rooms, or premises of an office, apartment house, or commercial or other establishment. Duties involve a combination of the following: sweeping; mopping and/or scrubbing, and polishing floors; removing chips, trash and other refuse; dusting equipment, furniture, or fixtures; polishing metal fixtures or trimmings; providing supplies and minor maintenance services, cleaning lavatories, showers, and rest rooms. Workers who specialize in window washing are excluded.

Battery hand: transfers or loads quills or bobbins of filling to the battery or loading hopper of automatic looms. May convey filling to looms by means of a hand truck.

Trucker, hand (including bobbin boy): pushes or pulls hand trucks, cars or wheel-barrows used for transporting goods and materials of all kinds about a warehouse, manufacturing plant, or other establishment, and usually loads or unloads hand trucks or wheelbarrows. May stack materials in storage bins, etc., and may keep records of materials moved.

Exhibits at the hearing introduced by the Government include wage data on these three occupations in Exhibits 18, 19, 20, 23, and 24. The area tabulations contained in the last two mentioned exhibits include data for approximately 85 percent of the workers included in the survey. Supplementary Government Exhibits A-1 through A-8 throw additional light on the prevailing minimum wages in the three occupations.

With respect to janitors, Table 3A of Government Exhibit 20 shows 9,299 janitors, slightly less than 2 percent of all of the workers covered by the survey, with an average wage of $1.00 an hour. As Supplementary Government Exhibits 5 and 7 indicate, slightly more than one-fourth of the establishments represented in the survey had no workers whose duties consisted primarily of janitorial services. The absence of reported janitors is particularly conspicuous in northern establishments where more than half of the reporting establishments represented included no workers whose functions were primarily of this type. In such plants the janitorial services made up part of the work of other employees; for example, sweeping around machines in order to permit a continuation of production (work subject to the Walsh-Healey Public Contracts Act) was performed as an incidental part of duties of other production workers.

Supplementary Government Exhibits A-1, A-5 and A-7 provide information as to the lowest rate paid janitors in establishments reporting such workers; and the lowest job rate in establishments which did not report such workers. Altogether 1120 establishments either reported janitors or reported no janitors but gave information as to the lowest established job rate. Of these establishments, 562 or 50.2 percent either reported $1.00 or more as the minimum rate for janitors or having no janitors, reported $1.00 or more as the lowest job rate. These 562 establishments employ 52.5 percent of the production workers in the industry. In addition, Supplementary Government Exhibit A-1 indicates that over two-fifths of the janitors earn from $1.00 to $1.05; vastly more than are found in any other five-cent interval.

Government Exhibits 23 and 24 indicate the importance of the five-cent interval beginning with $1.00 for janitors in each of the various producing areas reporting separately. Thus, for example, in Alabama and in South Carolina most of the janitors are reported within this range and in North Carolina and Georgia a far larger proportion of the janitors

are employed in this interval than in any other. Supplementary Government Exhibit A-7 shows that for establishments having no janitors the rate of $1.00 an hour is by far the most important lowest job rate in the range between 90 cents and $1.05; in this range, almost twice as many establishments reported a minimum job rate of $1.00 as reported any other figure and a similar conclusion is reached on the basis of the number of workers.

From the above it is concluded that $1.00 an hour represents the prevailing minimum wage for janitorial services in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

As previously noted, somewhat less than 2 percent of the workers included in the survey are classified as janitors. It is also clear from the record that many of the workers reported as janitors are performing work of types not directly enough connected with production activities to be covered by the Walsh-Healey Public Contracts Act. It is impossible from the record to determine what proportion of janitors are performing such work and the questionnaire returns of the Bureau of Labor Statistics would not yield such information.

There are, however, two other low-paying occupations about which there can be no doubt that the work is of the type covered by the Act. These occupations are hand truckers (including bobbin boys) and battery hands. Except for janitors, these two occupations have the lowest reported average hourly earnings. These occupations combined include 33,500 workers, or 6.9 percent of all production workers covered by the surveys.

Supplementary Government Exhibit A-1 as well as Government Exhibits 23 and 24 underscore the importance of the five-cent interval beginning with $1.00 an hour for each of these two occupations. Thus, for the United States, 29.2 percent of the battery hands received wages between $1.00

and $1.05, as contrasted with 3.9 percent of the 95-99.9 cent interval, and as further contrasted with 10.6 percent in *all* intervals below $1.00. Similarly a total of 27.2 percent of the hand truckers (including bobbin boys) earned between $1.00 and $1.05 as contrasted with 11.4 percent in the preceding five-cent interval. A total of 26.9 percent of the hand truckers (including bobbin boys) received earnings of less than $1.00.

Supplementary Government Exhibits A-4 and A-6 show that most of the establishments reporting either hand truckers or battery hands or both pay a minimum wage to these workers of at least $1.00 an hour and these establishments employ most of the production workers in the Industry. It may also be noted that in the South more establishments pay a minimum of $1.00 an hour to either battery hands or hand truckers than pay minimum wages to these workers at any other rate in the range between 90 cents and $1.05. Supplementary Government Exhibit A-6 indicates that in this range the rates of $1.02 and $1.03 are also important in the South.

Supplementary Government Exhibit A-8 shows data for 211 establishments, primarily located in the North, which reported no workers who primarily performed work included within the description of the occupation of hand truckers (including bobbin boys) or the occupation of battery hands. It will be noted that a majority of these establishments employing a majority of the production workers in such establishments reported the lowest job rate as $1.00 or more. Here again, the rate of $1.00 stands out, with more establishments, employing more workers, reporting a minimum job rate of $1.00 than reported a minimum job rate at any other interval in the range from 90 cents to $1.05. This is true both for the South and for the North.

It is clear therefore that the prevailing minimum wage is $1.00 an hour for the work of hand truckers (including bob-

bin boys) and for the work of battery hands, in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

As mentioned above, evidence in the record establishes conclusively that janitors, battery hands, and hand truckers are the lowest paid workers in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry. It is clear, therefore, that a determination of prevailing minimum wages for other occupations would result in rates at least as high, and in most instances higher, than the rate for these three occupations. However, even if detailed occupational wage data were available for every possible duty in a textile mill, it would obviously be undesirable to make a separate determination for each such occupation. The necessity for detailed job descriptions and the overlapping of duties between one job and another would lead to complications and misunderstandings in applying the determinations on the part of the industry and to difficult administrative problems in the proper enforcement of such determinations on the part of the Wage and Hour and Public Contracts Divisions of the Department of Labor. In view of these practical considerations, I therefore conclude that it is entirely proper to apply the minimum rate of $1.00 an hour to all occupations in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry which are covered under the regulations issued pursuant to the Walsh-Healey Public Contracts Act. Work performed in one textile mill is by its very nature similar to work performed in other textile mills. Accordingly, on the basis of the prevailing minimum wages for "similar work" in the Industry, I have concluded that $1.00 an hour is the prevailing minimum wage for all occupations in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry as defined herein.

A second basis for a determination under section 1(b) of the Walsh-Healey Public Contracts Act is wages paid in the particular or similar industries. On this approach, there is special significance to the evidence outlined above that $1.00

is the prevailing minimum rate for janitors, for hand truckers, and for battery hands. Government Exhibits 18, 19, 20, 23 and 24 indicate that these are the lowest paid for the country as a whole of the occupations selected for their particular significance in the industry; and, with rare exceptions, this is true in almost every area. There was no disagreement at the hearing that janitors, including sweepers and scrubbers, generally receive as low a rate as any workers in the Cotton, Silk, and Synthetic Textile Branch of the industry although there was a difference of opinion as to the extent to which such workers are covered by the Act. There was also no disagreement with the Bureau of Labor Statistics' explanation that the "selected" or "key" occupations include a complete range of occupations from the lowest-paid to the highest-paid workers. Workers in these occupations comprise 70.5 percent of all workers covered by the surveys. As noted above, apart from janitors, hand truckers (including bobbin boys) and battery hands generally receive the lowest wage among the "selected" or "key" occupations.

The most important additional lines of evidence as to prevailing minimum wages in the Textile Industry consist of Tables 1 and 5 of Government Exhibits 18, 19, and 20. Table 1 of Government Exhibit 20 clearly shows the importance of the 5-cent interval beginning with $1.00 for the earnings of all workers. Thus for the United States, this is the most important single 5-cent interval, with 11.9 percent of the workers receiving wages within this range, almost twice as many as in the preceding interval and almost as many as the total in all ranges below $1.00. In the Southeast the concentration in this interval is even sharper, with one worker in seven (14.4 percent) receiving wages between $1.00 and $1.05.

Many of the lowest paid workers included in Tables 1 and 7 of Government Exhibits 18, 19, and 20 are watchmen, general janitors (as distinguished from those clean-

ing around the machines), and other types of custodial workers who perform work not covered by the provisions of the Act. Because of the limitations of these tables, Table 5 is of added significance. This table reports the rates which the plant officials reported as established minimum job rates for non-custodial workers. Table 5A of Government Exhibit 20 shows that most of the textile mills in the survey with an established minimum job rate reported the rate to be $1.00 an hour or more. These plants employ 51.4 percent of the workers in the industry, as compared with 44.3 percent of the workers in plants reporting established job minimum rates of less than $1.00 and 4.3 percent of the workers in plants reporting no established minimum. In terms of number of establishments, only $1.02 is more important (6.6 percent as compared with 6.4 percent); in terms of number of production workers employed in these establishments, only $1.03½ is more important. Each of these rates, however, is above the minimum job rate reported by most establishments employing most of the workers. Although janitors and other custodial workers are excluded by the Bureau in obtaining information on established minimum job rates from plant officials, it may be noted that Supplementary Government Exhibit A-2 indicates that in about half of the establishments with minimum job rates the minimum janitor rate was identical with the established minimum job rate and that janitor minimum rates were more frequently above than below the established minimum job rate.

Another line of evidence is contained in the listings of plant minimums provided by the two textile unions. These listings were made a matter of public record at the hearing. It appears clear from the record that a very large proportion of the plants included in these listings also reported information to the American Cotton Manufacturers Institute. However, the minimum rates for only four of the plants listed were challenged. Excluding such plants from the tabulations, it appears that the major proportion of

the industry has minimum rates of $1.00 an hour or more in effect.

From all the evidence in the record, therefore, I conclude that $1.00 an hour is the prevailing minimum wage for the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

As noted above, the March 1952 surveys made by the Bureau of Labor Statistics cover plants primarily engaged in spinning and weaving. There is, however, adequate information from other sources indicating that wages in dyeing and finishing establishments are at least as high as those in spinning and weaving plants.

At the hearing a representative of the United Textile Workers of America testified that minimum wages paid in dyeing and finishing plants are higher than those in spinning and weaving plants. This statement was not contradicted.

The listings of plants in the industry supplied by the petitioners contained 510 dyeing and finishing plants employing in excess of 39,000 workers. In his statement at the hearing, the representative of the Textile Workers Union of America stated that only isolated workers in dyeing and finishing establishments were paid less than $1.05.

In addition, representatives of the Textile Workers Union of America and of the National Association of Cotton Manufacturers stated that average hourly earnings in dyeing and finishing plants traditionally exceed those in spinning and weaving plants. An inspection of such figures published by the Bureau of Labor Statistics bears out these statements. A report published by the Bureau shows that in July 1946 the difference was approximately 10 cents an hour. In July of 1952 the average hourly earnings in dyeing and finishing plants were 16 cents more than those in spinning and weaving plants.

An analysis of collective bargaining agreements on file with the Department of Labor as of 1952 gives information on 410 dyeing and finishing (except wool) establishments with almost 32,000 workers. Ninety-seven percent of these plants with 88 percent of the employees had a minimum job rate of $1.00 an hour or more. These figures cover a very large proportion of the industry as indicated by the fact that for 1947 the Census of Manufacturers reported 641 dyeing and finishing (except wool) plants employing 69,000 workers.

In addition, it should be recalled that a number of workers in dyeing and finishing departments are included in the two surveys made by the Bureau of Labor Statistics and, where such workers were included, figures relating to average hourly earnings and minimum job rates covered such workers as well as the workers in the other departments.

On the basis of all the above I, therefore determine that the prevailing minimum wage for all employees engaged in dyeing and finishing covered by the definition of this Industry is $1.00 an hour.

Learners and Apprentices

The Notice of Hearing invited comment and testimony as to the need for inclusion in any amended determination for a provision covering the employment of learners, beginners, and/or apprentices at subminimum rates. The United Textile Workers of America recommend that learners be permitted at subminimum rates for a period of from 4 to 6 weeks and that the present 3 percent limitation be continued. The record shows that this union recommended that the rates for learners be either 90 cents or $1.00.

The Textile Workers Union of America recommended that there be provision for learners at a rate of not less than $1.03 an hour and further recommended the continuation of the 3 percent tolerance and the learning period presently

provided. This latter recommendation was also supported by the Fall River Loomfixer's Union, the Fall River Slasher Tenders' and Helpers Association and the Fall River Drawing-In, Knot-Tiers' and Warp-Twisters' Association. The Soft Fiber Manufacturers' Institute recommended a provision for learners which contained an "adequate" tolerance limitation and an "adequate" learning period. The American Cotton Manufacturers Institute recommended the continuation of the present 3 percent tolerance and the learning period presently provided and that the learner rate should have approximately the same relationship to the prevailing minimum wages as contained in the present determination. No other party made any recommendation with respect to the need for learners.

On the basis of the record, I find that a provision for the employment of learners at subminimum rates should be provided and that the present 3 percent tolerance and learning period for the activities for which the employment of learners at subminimum rates is presently permitted should be continued. I also find that this subminimum rate should reflect the same percentage differential as has previously existed between the industry minimum wage and the learner subminimum wage, namely 8 percent. Accordingly, I find that the wage rate of 92 cents an hour is an appropriate subminimum wage for learners in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry.

No testimony was introduced at the hearing regarding the need for a subminimum rate covering the employment of apprentices. The present determination does not make any provision for the employment of apprentices at subminimum rates. I find that there is no need for a special provision covering the employment of apprentices.

Handicapped Workers

The regulations permit employment of handicapped workers at subminimum rates on contract work under the Act

and this authority was not at issue in the proceedings. It appears advisable to include in the determination, however, specific authorization for such employment.

Fringe Benefits

The Textile Workers Union of America recommended that a cost-of-living provision be included in the determination reflecting that provided for in its collective bargaining agreements. The United Textile Workers of America recommended the cost-of-living provision and, in addition, all fringe benefits covered in its contracts. The independent Fall River unions supported the recommendation of the Textile Workers Union of America. None of the other parties took a position with respect to these fringe benefits.

No determination issued under the Act provides for cost-of-living increases, shift differentials, paid holidays, insurance or pension plans or any other similar benefits. Provisions of the type listed above would be administratively cumbersome, and for some of them proper enforcement would be impossible. Moreover, there is considerable legal question as to whether such provisions are truly a part of prevailing minimum wages. For these reasons, I conclude that the determination should not contain provisions relating to these fringe benefits.

Assertion of Bias

Following the hearing in this matter a document entitled "Affidavit of Personal Bias or Disqualification of Officers Participating in Decisions" was addressed to me by W. Glen Harlan, attorney for a group of cotton manufacturing companies who were parties to the proceeding. This document asserted that I had prejudged the issue as to a nation-wide minimum wage in this industry, and further that I and other officials of the Department of Labor have in various ways indicated a prejudice as to the wage to be recognized in the industry. The document accordingly requested that

I and such other officials of the Department be disqualified to act further in this matter or participate in any decisions to be rendered herein.

The question of bias was initially raised at the hearing by Mr. Harlan and he at that time requested that certain files of the Department of Labor be produced for the purpose of ascertaining whether they contained any evidence to support a charge of bias. A similar request was submitted to me on two separate occasions following the hearing. In each instance I denied the request on the ground that the material requested had no relevance to the proceeding. My ruling in this regard was based upon two primary considerations, first, that the decision which I am required to make in this proceeding must be based solely upon the record, and, consequently, the record should contain only data which relates to the subject matter of the proceeding, namely, prevailing minimum wages in the Textile Industry; secondly, it is my view that the assertion of a capricious or frivolous challenge for the bias does not warrant a wholesale disclosure of material in the Department files.

It is my duty under the law to make an objective decision based upon all of the evidence and data in the record. I have endeavored to arrive at such a decision, with due regard to the purposes of the Act and my obligations as an administrative officer of the United States. It is my belief and conviction that all other individuals in the Department of Labor who participated in any way in this proceeding have been similarly guided. I therefore find that the assertion of bias submitted herein is completely without merit.

Proposed Decision

Notice is hereby given that, in accordance with all of the considerations expressed herein, I propose to issue a decision in this matter as set forth below. Interested parties may submit, within 15 days from publication of this proposed decision in the Federal Register any exceptions to the

proposed decision or any data intended either in rebuttal or in support of any of the tabulations or data received as part of the record following the close of the hearing.

"The minimum wage determination for the Textile Industry contained in section 202.43 of this part (Title 41 Code of Federal Regulations, part 202) is amended as follows:

1. Subsection 202.43(b) is amended to read as follows:

"(b) *Minimum wage.* (1) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis. The Cotton, Silk, and Synthetic Textile Branch includes the manufacturing, processing, bleaching, dyeing, printing or other finishing of any of the following items which are within the scope of the Textile Industry, as defined herein, and are made primarily of cotton, silk or synthetic fiber or mixtures of these fibers: yarn; thread; broad-woven fabrics (more than 12 inches in width); sheets and pillow cases; towels; and wash cloths and scrubbing cloths.

(2) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry, under contracts subject to the Walsh-Healey Public Contracts Act shall be 87 cents an hour, arrived at either on a time or piece-rate basis."

2. Subsection 202.43(c) is amended to read as follows:

"(c) *Subminimum wages authorized:* (1) Learners may be employed subject to the following terms and conditions:

(i) Learners may be employed in the occupations of machine operating, machine tending, machine fixing, and jobs immediately incidental thereto:

(ii) In the performance of contracts for the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry learners may be paid a subminimum rate of 92 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece rates paid to experienced workers and earnings, based upon those piece rates, if such earnings are in excess of 92 cents an hour. In the performance of contracts for products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry, learners may be paid a subminimum rate of 80 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece-rates paid to experienced workers and earnings, based upon these piece-rates, if such earnings are in excess of 80 cents an hour;

(iii) The length of the learning period shall be 240 hours unless the learner has had previous experience in the industry in which case the number of hours of such experience must be deducted from the 240 hour learning period.

(iv) The number of learners may not exceed 3 percent of the total number of machine operators, machine tenders, machine fixers and persons engaged in jobs immediately incidental thereto except where, upon application to the Administrator of the Wage and Hour and Public Contracts Divisions or his authorized representatives, a special certificate has been issued authorizing employment of learners in excess of 3 percent to meet a plant's abnormal situation created by establishment of new plants, expansion of production or plant facilities, and the like. Such special certificates will not be issued where it appears that experienced workers are available to the employer within

the area from which he customarily draws his supply of labor, or that the issue of a special certificate will create unfair competitive labor cost advantages, or will impair or depress working standards established for experienced workers for work of a like or comparable character in the industry.

(2) Handicapped workers may be employed at wages below the applicable minimum wages specified herein upon the same terms and conditions as are prescribed for the employment of handicapped workers by the regulations of the Administrator of the Wage and Hour Division of the Department of Labor (29 CFR Parts 524, and 525, respectively), under section 14 of the Fair Labor Standards Act as amended.

The Administrator of the Public Contracts Division is authorized to issue certificates under the Public Contracts Act for the employment of handicapped workers not subject to different acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act."

Signed at Washington, D. C. this 5th day of December, 1952. Maurice J. Tobin, Secretary of Labor.

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United States Department of Labor

Title 41—Public Contracts

Part 202—Minimum Wage Determinations

NOTICE OF AMENDMENT TO THE DETERMINATION OF THE PREVAILING MINIMUM WAGE FOR THE TEXTILE INDUSTRY.

On December 11, 1952 notice was published in the Federal Register of a proposed decision of the Secretary of Labor in regard to the determination of the prevailing

minimum wage for the Textile Industry (17 F.R. 11197). The notice allowed a period of fifteen days in which interested parties might submit exceptions to the proposed decision or any data intended either in rebuttal or in support of certain material and data received as part of the record following the close of the hearing in this matter. The time for filing exceptions and other material was subsequently extended for an additional fifteen days to January 10, 1953.

Exceptions and objections to the proposed determination have been received from the American Cotton Manufacturers Institute, the National Association of Cotton Manufacturers, the National Association of Wool Manufacturers, the Textile Workers Union of America, and Attorney James L. Rankin on behalf of thirty-four textile companies and Attorney W. Glen Harlan on behalf of thirty-seven cotton textile mills.

In addition to the filing of objections Attorney James L. Rankin and Attorney W. Glen Harlan filed petitions for rehearing and oral argument in order to permit examination of witnesses in regard to certain statistical material received as part of the record following the close of the hearing. These motions were disposed of by an order which I issued in this matter, on January 12, 1953 and addressed to the interested parties. It was indicated in such order that the supplementary statistical data received in the record following the close of the hearing was for the purpose of clarification and elaboration of the basic record material and did not in itself constitute new basic evidence, and that no necessity was shown for the reopening of the hearing.

The exceptions submitted by the American Cotton Manufacturers Institute and Attorneys Rankin and Harlan were directed primarily toward the proposal to establish a single minimum wage for the Industry, and also as to the finding that the wage data in the record supports an industry-wide

minimum wage of $1.00 an hour. Objection was also made to the proposed wage of 92 cents an hour for learners. The Textile Workers Union of America objected to the proposed $1.00 an hour rate on the ground that such rate is too low to have any substantial effect upon the Industry.

The matters raised in these various objections were matters which were considered by me in great detail in arriving at the proposed decision. I have carefully considered these various exceptions and the arguments presented in support thereof and find nothing therein which would require me to modify my proposed decision.

In their submissions the National Association of Cotton Manufacturers and the Textile Workers Union of America have urged that certain additional products be added to the Cotton, Silk and Synthetic Textile Branch of the Textile

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Industry. These proposals and the supporting material have been examined in the light of the whole record and I have come to the conclusion that woven bedspreads, blankets, diapers and dishcloths are primarily made in integrated mills and were adequately represented in the wage data upon which my proposed determination was based. In consequence, these items have been added to the definition of the Cotton, Silk, and Synthetic Textile Branch.

After consideration of all matters presented in this proceeding the proposed decision is hereby adopted, with the definitional change indicated above.

Accordingly, pursuant to authority vested in me by the Walsh-Healey Public Contracts Act this part is amended as follows:

1. Subsection 202.43(b) is amended to read as follows:

"(b) *Minimum wage.* (1) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of

the Textile Industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis. The Cotton, Silk, and Synthetic Textile Branch includes the manufacturing, processing, bleaching, dying, printing or other finishing of any of the following items which are within the scope of the Textile Industry, as defined herein, and are made primarily of cotton, silk, or synthetic fiber or mixtures of these fibers: yarn; thread; broad-woven fabrics (more than 12 inches in width); sheets and pillow cases; blankets; woven bedspreads; diapers; towels; and wash cloths, scrubbing cloths and dishcloths.

(2) The minimum wage for persons employed in the manufacturing or furnishing of the products of the Textile Industry, other than the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry, under contracts subject to the Walsh-Healey Public Contracts Act shall be 87 cents an hour, arrived at either on a time or piece-rate basis."

2. Subsection 202.43(c) is amended to read as follows:

"(c) Subminimum wages authorized: (1) Learners may be employed subject to the following terms and conditions:

(i) Learners may be employed in the occupations of machine operating, machine tending, machine fixing, and jobs immediately incidental thereto;

(ii) In the performance of contracts for the products of the Cotton, Silk, and Synthetic Textile Branch of the Industry learners may be paid a subminimum rate of 92 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece rates paid to experienced workers and learnings, based upon those piece rates, if such earnings are in excess of 92 cents an hour. In the performance of contracts for products of the Textile Industry, other than the products of the Cotton, Silk,

and Synthetic Textile Branch of the Industry, learners may be paid a subminimum rate of 80 cents an hour unless experienced workers in the same plant and occupations are paid on a piece-rate basis, in which case learners must be paid the same piece rates paid to experienced workers and earnings, based upon these piece rates, if such earnings are in excess of 80 cents an hour;

(WH53-751)

(iii) The length of the learning period shall be 240 hours unless the learner has had previous experience in the industry in which case the number of hours of such experience must be deducted from the 240 hour learning period.

(iv) The number of learners may not exceed 3 percent of the total number of machine operators, machine tenders, machine fixers and persons engaged in jobs immediately incidental thereto except where, upon application to the Administrator of the Wage and Hour and Public Contracts Divisions or his authorized representative, a special certificate has been issued authorizing employment of learners in excess of 3 percent to meet a plant's abnormal situation created by establishment of new plants, expansion of production or plant facilities, and the like. Such special certificates will not be issued where it appears that experienced workers are available to the employer within the area from which he customarily draws his supply of labor, or that the issue of a special certificate will create unfair competitive labor cost advantages, or will impair or depress working standards established for experienced workers for work of a like or comparable character in the industry.

(2) Handicapped workers may be employed at wages below the applicable minimum wages specified herein upon the same terms and conditions as are prescribed for the employment of handicapped workers by the regulations of the Administrator of the Wage and Hour Division of the Department of Labor (29 CFR Parts 524, and 525, respective-

ly), under section 14 of the Fair Labor Standards Act as amended.

The Administrator of the Public Contracts Division is authorized to issue certificates under the Public Contracts Act for the employment of handicapped workers not subject to the Fair Labor Standards Act or subject to different minimum rates of pay under the two Acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act."

3. The effective date provided in subsection 202.43(e) is changed to read February 21, 1953.

(49 Stat. 2036; 41 U.S.C. 35)

Signed at Washington, D. C. this 15th day of January 1953.

Maurice J. Tobin, Secretary of Labor

Published in the Federal Register, January 22, 1953.

APPENDIX E

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 259-53

COVINGTON MILLS, ET AL., *Plaintiffs*,

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant*.

Civil Action No. 614-53

ALABAMA MILLS, INC., ET AL., *Plaintiffs*,

v.

JAMES P. MITCHELL, Secretary of Labor, *Defendant*.

Judgment

Upon consideration of the certified copy of the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit, filed in this cause on May 14, 1956, reversing the summary judgment entered by this Court on April 7, 1955, and remanding the cause for proceedings in accordance with said opinion, and upon consideration of the motion of plaintiffs for ruling on defendant's motion to dismiss and for judgment in accordance with certified copy of opinion of the Court of Appeals, and the response of defendant Secretary of Labor withdrawing said motion to dismiss, it is this 13 day of June, 1956,

Adjudged, Ordered and Decreed as follows:

1. That the summary judgment of this Court entered April 7, 1955, be and the same is hereby vacated and set aside.

2. That the motion for summary judgment filed by the plaintiffs be and it is hereby denied.

3. That the motions for summary judgment of the defendant and intervening defendants be and they hereby are granted, and the complaint be and it is hereby dismissed.

4. That the plaintiffs pay the costs of these proceedings to be taxed by the Clerk and that defendant and intervening defendants have execution therefor.

5. That jurisdiction of this cause is retained for such other and further proceedings as may be proper.

ALEXANDER HOLTZOFF,
Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1957.

C. A. 614-53

No. 13,597

ALABAMA MILLS, INC., ET AL., *Appellants*,

v.

JAMES P. MITCHELL, Secretary of Labor, et al., *Appellees*.

Appeal from the United States District Court for the District of Columbia.

Before: Edgerton, Chief Judge, and Washington and Danaher, Circuit Judges.

Judgment

This cause was submitted on the record from the United States District Court for the District of Columbia, and on the briefs of the parties pursuant to the stipulation of counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

It is further Ordered by the Court that appellee, Textile Workers Union of America, CIO, and appellees National Association of Cotton Manufacturers, Berkshire Hathaway, Inc., Fitchburg Yarn Company and Cove Street Corporation recover from appellants their taxable costs on this appeal and have execution therefor.

Dated: April 26, 1957.

PER CURIAM.

Circuit Judge Washington dissents.